



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-1021]

RIN 1625-AA00

Safety Zone for Fireworks Display; Spa Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of Spa Creek. This action is necessary to provide for the safety of life on these navigable waters of Spa Creek at Annapolis, MD, for a fireworks display on December 31, 2018. This regulation prohibits persons and vessels from entering the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 11 p.m. on December 31, 2018, through 1 a.m. on January 1, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-1021 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Mr. Ron Houck, Sector Maryland-National Capital Region Waterways

Management Division, U.S. Coast Guard; telephone 410-576-2674, email

Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On October 17, 2018, Pyrotecnico, Inc., of New Castle, PA, notified the Coast Guard that it will be conducting a fireworks display from 11:55 p.m. on December 31, 2018, to 12:30 a.m. on January 1, 2019, sponsored by the City of Annapolis, MD. The fireworks are to be launched from a barge in Spa Creek, in Annapolis, MD. Additional details were received on November 5, 2018. In response, on November 27, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Safety Zone for Fireworks Display; Spa Creek, Annapolis, MD" (83 FR 60802). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended December 12, 2018, we received seven comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public

interest because immediate action is needed to mitigate the potential safety hazards associated with a fireworks display in this location.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port (COTP) Maryland-NCR has determined that potential hazards associated with the planned fireworks display on December 31, 2018, will be a safety concern for anyone within a 400-foot radius of the fireworks barge. This rule is needed to ensure safety of vessels on the navigable waters within 400 feet of the fireworks barge on Spa Creek before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received 7 public submissions to the docket responding to our NPRM published November 27, 2018. We thank all of the commenters for taking time to review the NPRM and submit comments regarding this action.

The majority of commenters expressed support for the rule, but there were some concerns. Below in this section we have presented our summaries of comments in italics, and have stated our responses after each summary.

Winds during winter could carry burning embers and projectiles farther than the 400 feet distance established for the zone. The 400 feet from the fireworks barge is an insufficient distance and the safety zone should be increased in size.

The minimum safe distance from the fireworks barge used by the Coast Guard to determine the size of the safety zone is based on industry standards for outdoor aerial fireworks set by the National Fire Protection Association (NFPA). The NFPA standard for this fireworks display is 280 feet from the discharge site. At the request of the

contracted fireworks company, Pyrotecnico, the Coast Guard is using 400 feet for the size of its safety zone, which is an increase of more than 40 percent above the safe distance set by the NFPA.

Like people and property, the protection of wildlife should be considered and any fireworks that end up in the waterway should be recovered and disposed of following the display.

After completing the required analysis for the rule, the Coast Guard has determined that this rulemaking will not have a significant effect on the human environment. In accordance with applicable environmental laws, this analysis is of the action being taken by the Coast Guard, the creation of the safety zone, not the underlying triggering event—the fireworks, which appear to be the commenter's source of concern with respect to wildlife. The Coast Guard agrees that considering the effects of fireworks on the environment is important; however, it is up to the event sponsor to determine the appropriate level of clean up for falling debris and the potential impact of the fireworks on wildlife.

There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a temporary safety zone from 11 p.m. on December 31, 2018, through 1 a.m. on January 1, 2019. The safety zone will cover all navigable waters within 400 feet of the fireworks barge in Spa Creek located within 400 feet of the fireworks barge in approximate position latitude 38°58'32.48" N, longitude 076°28'57.55" W, located at Annapolis, MD. The duration of the safety zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the

scheduled fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, duration, and time-of-day of the safety zone. This zone covers the entire navigable channel. Although vessel traffic will not be able to safely transit around this safety zone, the impact will be for 2 hours during the evening when vessel traffic in Spa Creek is normally low. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during

rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 2 hours that prohibits entry within a portion of Spa Creek. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; and; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-1021 to read as follows:

§ 165.T05-1021 Safety Zone for Fireworks Display; Spa Creek, Annapolis, MD.

(a) Location. The following area is a safety zone: All navigable waters of Spa Creek within 400 feet of the fireworks barge in approximate position latitude 38°58'32.48" N, longitude 076°28'57.55" W, located at Annapolis, MD. All coordinates refer to datum NAD 1983.

(b) Definitions. As used in this section:

(1) Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

(2) Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. All vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's designated representative by telephone at 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement officials. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement period. This section will be enforced from 11 p.m. on December 31, 2018 through 1 a.m. on January 1, 2019.

Dated: December 21, 2018

Joseph B. Loring,
Captain, U.S. Coast Guard,
Captain of the Port Maryland-National Capital Region.
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